

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Christopher Conway	Team: Team # 6	CCRB Case #: 201310073	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Monday, 10/21/2013 8:23 PM	Location of Incident: § 87(2)(b)	Precinct: 47	18 Mo. SOL 4/21/2015	EO SOL 4/21/2015	
Date/Time CV Reported Fri, 10/25/2013 3:42 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 10/25/2013 3:42 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Bennett Shelley	18552	947489	047 PCT
2. POM Adam Drucker	26507	948328	047 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Bennett Shelley	Abuse: PO Bennett Shelley damaged § 87(2)(b) s property.	§ 87(2)(b)
B.POM Adam Drucker	Abuse: PO Adam Drucker damaged § 87(2)(b) s property.	§ 87(2)(b)
C.POM Bennett Shelley	Abuse: PO Bennett Shelley entered § 87(2)(b) in the Bronx.	§ 87(2)(b)
D.POM Adam Drucker	Abuse: PO Adam Drucker entered § 87(2)(b) in the Bronx.	§ 87(2)(b)

Case Summary

On October 25, 2013, § 87(2)(b) filed this complaint with the CCRB by phone. Around 8:23 p.m. on October 21, 2013, PO Bennett Shelley and PO Adam Drucker of the 47th Precinct responded to a noise complaint at § 87(2)(b) apartment at § 87(2)(b) in the Bronx. The following allegations resulted:

Allegation A—Abuse of Authority: PO Bennett Shelley damaged § 87(2)(b) property.

Allegation B— Abuse of Authority: PO Adam Drucker damaged § 87(2)(b) property.

Allegation C—Abuse of Authority: PO Bennett Shelley entered § 87(2)(b) in the Bronx.

Allegation D— Abuse of Authority: PO Adam Drucker entered § 87(2)(b) in the Bronx.

§ 87(2)(b), § 87(2)(g)

Results of Investigation

Civilian Statement

Complainant/victim: § 87(2)(b)

- § 87(2)(b) was § 87(2)(b) old on the incident date. He is a Hispanic male who stands at § 87(2)(b). § 87(2)(b)

CCRB Testimony

On November 7, 2013, § 87(2)(b) was interviewed in his home at § 87(2)(b) in the Bronx (encl. 5a-b). His statement was consistent with his initial complaint which he provided by phone to the CCRB.

Around 8:00 p.m. on October 21, 2013, § 87(2)(b) was in his apartment. He was in an ongoing dispute with his upstairs neighbors over noise complaints, and was “hollering” at the ceiling to tell them to quiet down. § 87(2)(b) stated that the noises cause him headaches. § 87(2)(b) put music on his speaker system at around 34 decibels to drown out the noise from upstairs. About 20-30 minutes after he put on his music, he heard a loud knocking on his front door. § 87(2)(b) turned his music off and walked from his living room down a short hallway to the door. § 87(2)(b) asked who was knocking, and a voice responded saying it was the police. § 87(2)(b) looked through the peephole and saw an officer who the investigation has identified as PO Bennett Shelley crouching holding his baton and an officer the investigation has identified as PO Adam Drucker standing to PO Shelley’s left holding his own baton. There was an elderly man in the outside hall observing the proceedings, but who quickly ran off; § 87(2)(b) thought he may have been the person who called the police, or just a bystander, but did not know. § 87(2)(b) opened the door, and the officers immediately asked him for his ID. PO Drucker held the door open with his hand. § 87(2)(b) walked towards his bedroom to get his ID, leaving the front door open. § 87(2)(b) walked down a short hallway and across the living room, approximately 15-20 feet away from the door, when he heard behind him the click of the door

locking. He saw the officers had allowed themselves in without his consent. § 87(2)(b) did not ask them to leave, nor did he say anything about the fact that they had entered. An officer asked if there was anyone else there in the apartment, and § 87(2)(b) said no. § 87(2)(b) became very concerned, as he is mentally ill with manic-depressive and bipolar disorder, and he felt he was at a higher risk to have police force used against him. § 87(2)(b) felt the officers were trying to see if there were any witnesses around in case they were going to abuse him. § 87(2)(b) provided the officers with his ID without comment or complaint.

PO Shelley issued § 87(2)(b) a summons for excessive noise and told him that he cannot make such noise because he has neighbors. § 87(2)(b) said the summons was unfair, and explained that he was playing the music loudly to drown out the noise from the people who live over him. The officers then left the apartment; their time spent inside there took about 15-20 minutes. After the encounter, § 87(2)(b) noticed that his door was dented; he assumed that the dents were caused from the officers striking with batons. § 87(2)(b) said the officers should have just rang his bell which is very loud, or called him on the intercom out front.

On November 7, 2013, the undersigned investigator took two photographs of the dents on § 87(2)(b) door, using a pen as comparison (encl. 5c-d). The photographs show at least three dents near the peephole slightly smaller than a fingernail.

NYPD Statements:

Subject Officer: PO BENNETT SHELLEY

- *PO Bennett Shelley was § 87(2)(b) old on the incident date. He is a § 87(2)(b).*
- *PO Shelley worked from 3:00 p.m. to 11:35 p.m. on October 21, 2013. He was assigned to patrol sectors H, I, and J, and was in uniform working with PO Adam Drucker.*

Summons

Summons #§ 87(2)(b) written by PO Shelley at 8:23 p.m. on October 21, 2013, indicated that § 87(2)(b) was issued a summons for creating unreasonable noise in a residential building (encl. 6i).

Memo Book

PO Shelley indicated in his memo book (encl. 6b-h) that at 8:12 p.m. he responded to a dispute at § 87(2)(b). At 8:35 p.m. a summons was issued to § 87(2)(b) who stated he was playing loud music to annoy his neighbors. At the distance of 1000 feet PO Shelley could determine that Rick Ross (rapper) was playing.

CCRB Testimony

On November 19, 2013, PO Bennett Shelley was interviewed at the CCRB (encl. 6j-k).

When PO Shelley received the radio run and responded to the scene at 8:12 p.m., he and his partner could hear the music very loud from a half-block away. The officers spoke to the tenant in #2A, a female complainant who stated that the male beneath her, § 87(2)(b) was unhappy that lesbians lived above him, so he blasted music to annoy her. She described several incidents of the same, including § 87(2)(b) banging on the ceiling. PO Shelley and PO Drucker went downstairs and knocked on § 87(2)(b) door with their hands, and stated they were the police and to open up. The music seemed to be too loud for the § 87(2)(b) to hear them, so PO Shelley and PO Drucker drew their asps and struck the door. § 87(2)(b) screamed “dyke” multiple times, which PO Shelley could hear through the door. While the officers knocked on the

door, two individuals walked by in the hallway and told the officers they have had problems with § 87(2)(b) playing music before.

After four to five minutes, § 87(2)(b) turned the music off and answered the door. § 87(2)(b) was very agitated and upset with the neighbors above him, though not with the police. The officers explained why they were there, and PO Shelley ordered § 87(2)(b) to provide his ID so he could be written a summons. § 87(2)(b) stepped aside and allowed the officers to enter, and went to retrieve his ID. PO Shelley could not recall where he retrieved his ID from. § 87(2)(b) did not consent verbally to the officers' entry, but stepped aside, did not close the door, and did not request they leave or stay outside. PO Shelley walked into the living room, while PO Drucker stood behind him nearer the door. PO Shelley walked about 10-15 steps from the front door, and did not search or open anything inside § 87(2)(b) residence.

§ 87(2)(b) stated that he played music loudly to annoy his upstairs neighbors because he did not want to live with them anymore. PO Shelley told him to talk to the landlord, to see if he could move into one of the attached buildings so he would not have that problem anymore. PO Shelley wrote § 87(2)(b) a c-summons for the noise violation. After issuing the summons, PO Shelley and PO Drucker left. The incident had lasted about 10-15 minutes.

Subject Officer: PO ADAM DRUCKER

- PO Adam Drucker was § 87(2)(b) old on the incident date. He is a § 87(2)(b)
- PO Drucker's tour on October 21, 2013, was from 3:00 p.m. to 11:35 p.m. He was assigned to patrol sectors H, I, and J, and was in uniform working with PO Bennett Shelley.

Memo Book

PO Drucker indicated in his memo book that at 8:13 p.m. he responded to a dispute at § 87(2)(b). At 8:23 p.m. a c-summons was issued to § 87(2)(b) and at 8:35 p.m. the officers were off the scene (encl. 7a-c).

CCRB Testimony

On November 20, 2013, PO Adam Drucker was interviewed at the CCRB (encl. 7d-e).

When PO Drucker and his partner received the radio run and responded to the scene at 8:13 p.m., they were down the block from the building. The music was extremely loud, and despite the location being a thick stone and glass building, the officers could hear from the street that loud rap music was blasting. PO Drucker went to the complainant's apartment; the female complainant stated that her downstairs neighbor § 87(2)(b) frequently played music in retaliation for her and her girlfriend's kids playing on floor. The complainant also stated § 87(2)(b) verbally attacked her and her girlfriend, and harassed them with derogatory words for their gender and sexuality.

PO Drucker and his partner went downstairs to § 87(2)(b) apartment to ask him to lower the music. They shouted for § 87(2)(b) to open up and began knocking with their fists, but there was no response; the music was "unbelievably loud" with an "extraordinarily high bass," and PO Drucker presumed that § 87(2)(b) could not hear them. While they knocked, three individuals walked by in the hallway and said that they often have issues with § 87(2)(b) as well. They said that § 87(2)(b) "does nutty things, makes crazy noises," turns the radio up for no reason, and has arguments with people. As § 87(2)(b) was not answering the door, PO Drucker took out his asp and began striking the door with the asp. After five minutes of knocking and striking with the asp, § 87(2)(b) finally opened the door. PO Drucker did notice at the time that there were small dents in the door where the asp struck, but explained that they used the asps because § 87(2)(b) was not responding to the regular knocking.

The officers initially spoke to § 87(2)(b) across the threshold of the door. When the officers explained why they were there, § 87(2)(b) was resistant to the idea of shutting off the music. § 87(2)(b) said he played the music loud to annoy his upstairs neighbors, and he did not want to shut it off. PO Shelley said that they were going to give him a summons, and ordered him to get his ID. § 87(2)(b) stepped aside, and the officers followed him about 10-15 feet into the apartment into the living room. § 87(2)(b) never asked them to leave, and did not close the door, but instead stepped aside to allow them to enter.

PO Shelley wrote § 87(2)(b) a c-summons for unreasonable noise. The officers then left § 87(2)(b) apartment.

Summons/Arrest for Incident and Disposition

- Office of Court Administration records indicate no record for the summons § 87(2)(b) received in this case. (encl. 10k)

Status of Civil Proceedings

- The Office of the Comptroller indicated that § 87(2)(b) has not files any Notice of Claim in regards to this incident (encl. 10l)

§ 87(2)(b)

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§ 87(2)(b)
§ 87(2)(b)
§ 87(2)(b) (encl. 10b-j).

Civilian CCRB History

- This is the first CCRB complaint filed by § 87(2)(b) (encl. 2a).

Subject Officers CCRB History

- PO Bennett Shelley has been a member of the service for five years and there is one substantiated CCRB allegation against him (encl. 1a-b). In CCRB case #201002667, PO Shelley was alleged to have performed an unlawful frisk, and this charge was substantiated with charges recommended. PO Shelley received instructinos.
- PO Adam Drucker has been a member of the service for four years and there are no substantiated CCRB allegations against him (encl. 1c).

Conclusion

Identification of Subject Officer

§ 87(2)(b) identified PO Shelley by name and tax number as a subject officer because he observed PO Shelley write his summons. ARCS records from the 47th Precinct identified PO Drucker as PO Shelley's partner that tour. Both PO Shelley and PO Drucker stated they were the officers who responded to the noise complaint and who used their asps on § 87(2)(b) door and entered his apartment. Allegations are pleaded against PO Shelley and PO Drucker respectively.

Investigative Findings and Recommendations

Allegation A—Abuse of Authority: PO Bennett Shelley damaged § 87(2)(b) property.

Allegation B— Abuse of Authority: PO Adam Drucker damaged § 87(2)(b) property.

§ 87(2)(b) alleged that officers struck his door with asps. § 87(2)(b) claimed his door was damaged due to the blows from the officers' asps.

It is undisputed that officers used their asps to knock on § 87(2)(b) door. The officers stated that they were knocking for approximately five minutes before § 87(2)(b) opened the door. At first they used their fists, and when there was no response, they switched to their asps. It was only when they switched to their asps did § 87(2)(b) turn down his music and answer the door. PO Drucker confirmed tht there were small dents in the door where their asps struck.

§ 87(2)(b), § 87(2)(g)

Allegation C—Abuse of Authority: PO Bennett Shelley entered 4305 Furman Avenue #1A in the Bronx.

Allegation D— Abuse of Authority: PO Adam Drucker entered 4305 Furman Avenue #1A in the Bronx.

§ 87(2)(b) alleged that officers entered his home without his permission when he walked to the back to get his ID card.

It is undisputed that when § 87(2)(b) turned around to walk to his bedroom he left the front door open, and did not verbally forbid the officers from entering. When the officers did enter his home, he did not make any statements complaining of this or requesting that they step back outside.

PO Shelley and PO Drucker both interpreted § 87(2)(b) stepping aside as to allow the officers in upon being requested for ID. PO Shelley stated that § 87(2)(b) made no attempt to close the door or ask the officers to leave, and he did not seem upset or agitated with the officers at all.

In the case of *People v. Smith*, similar circumstances led an officer to respond to an apartment to investigate a complaint. An individual opened the door and the officer requested his ID, and followed him into his apartment to see him obtain it. The individual was arrested for having false identification, and the New York Supreme Court held that the entry and arrest were valid as “a defendant's consent may be established by conduct as well as by words...the defendant engaged in a discussion with the officer from inside the apartment; he complied with the officer's request for identification without hesitation and not even the lightest objection to the officer's entry or continued presence in the apartment was raised. A consensual entry is a compelling inference from these facts.” (*People v. Smith*, 239 A.D.2d 219; 658 N.Y.S.2d 259 [1997])

§ 87(2)(b), § 87(2)(g)

Team: _____

Investigator: _____
Signature Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date